

**IDAHO STATE TAX COMMISSION**  
**COMMISSIONERS' OPEN MEETING**  
**MINUTES OF MEETING HELD APRIL 9, 2013**

In attendance: Commissioners Richard Jackson, Tom Katsilometes, David Langhorst, and Ken Roberts; Michael Chakarun, Valerie Dilley, Steve Fiscus, Roxanne Lopez, Robin O'Neill, Chuck Pond, Mike Teller, Randy Tilley, Bill von Tagen, Doreen Warren; George Brown, Chelsea Kidney, Erick Shaner, and Phil Skinner; Cynthia Adrian, Alan Dornfest, Leslie Jones, Jim Sereduk, Don Williams;

Guest: Lyn Darrington.

**Public Session.**

Commissioner Ken Roberts convened the open meeting at 8:30 a.m. (MDT), in Conference Room 5CR5.

**Executive Session.**

Commissioner David Langhorst moved to enter into the Executive Session and Commissioner Tom Katsilometes seconded. Commissioners Jackson, Katsilometes, Langhorst, and Roberts all voted in favor by roll call and the motion passed.

The Commission met in executive session with its legal counsel pursuant to Idaho Code § 67-2345(1)(f) to discuss the current status of litigation to which the Commission is a party. No matters requiring a vote of the Commission resulted from the executive session.

**Public Session.**

Commissioner Roberts declared the Executive Session was ended.

**Recess.**

Commissioner Roberts recessed the Public Session to reconvene at 9:30 a.m. (MDT) in 1CR5, as indicated on the agenda.

**Reconvene Meeting.**

Commissioner Roberts reconvened the open meeting, still in Public Session.

**Presentation of Certificates of Service.**

Roxanne Lopez, Human Resources Officer, acknowledged the employees that were receiving a Certificate of Service, and stated how much all of their work efforts were appreciated.

The Certificate of Service recipients were: Valerie Dilley, Administrative Assistant 2 (Commissioners), and Valerie Curnow, Office Specialist 2, in Fuels Tax Audit (Audit/Collections) for 5 years of service; Zenda Hill, Revenue Process Clerk, in Accounts Registration Maintenance (Revenue Operations) for 20 years of service and a thank-you letter from the Governor; Linda Johnson, IT Systems Analyst, ( Information Technology) for 30 years of service with a thank-you

letter from the Governor; Jeanne Hatch, Technical Records Specialist 1, in Permit Accounting (Revenue Operations) for 40 years of service with a thank-you letter from the Governor.

Merry Weirick, Office Specialist 2, in Image and Data Management (Revenue Operations), was absent and will have her certificate of service for 35 years of service with a thank-you letter from the Governor presented at a later date. Cynthia Hayden, Technical Records Specialist 1, in the Pocatello Field Office (Audit/Collections), will have her Certificate of Service for 15 years of service be given to Debbie Coulson, Compliance and Collections Bureau Chief, for presentation at a later date.

The Commissioners said how the recipients' years of service and efforts were commendable and appreciated. Commissioner Roberts noted being impressed with the Tax Commission employees' amount of commitment and added that he appreciates being here. Commissioner Langhorst emphasized how sincere the commissioners are when they say thanks and they all realize how important the recipients' jobs are. Commissioner Katsilometes said it is always great to see the recipients and hopes they realize how appreciated they are. Chairman Jackson noted the recipients represent 150 years of service and invited them to attend the remainder of the open meeting if they desired.

### **Business Requiring Vote of the Commission.**

#### Minutes: Open Meeting – March 6, 2013.

Commissioner Katsilometes moved that the minutes of the open meeting held on March 6, 2013, be approved, and Commissioner Langhorst seconded. There were no comments or amendments. All voted in the affirmative, and the minutes were approved.

#### Resolution 13-01 – Delegations of Authority.

Chuck Pond, Safety & Security Officer, presented the Resolution 13-01 on the Delegations of Authority. Steve Fiscus, Property Tax Division Administrator, noted that the name County Support needed to be updated. Chairman Jackson said there would be updates made with the coming changes, but recommended adopting the resolution as a working document. Randy Tilley, Audit & Collections Division Administrator, noted concerns about the field services portion and would like further review.

Commissioner Langhorst moved that the vote on Resolution 13-01 – Delegations of Authority be deferred until the next open meeting, allowing more time for needed review and discussion. All agreed and the resolution was deferred until the next open meeting on May 1, 2013.

#### Resolution 13-02 – Temporary Property Tax Rule 632T.

Alan Dornfest, Property Tax Policy Bureau Chief, presented Resolution 13-02 – Temporary Property Tax Rule 632T, which provides guidance and an application process.

Commissioner Langhorst moved that the Resolution 13-02 – Temporary Property Tax Rule 632T be approved, and Commissioner Katsilometes seconded. There were no further comments or amendments. All voted in the affirmative, and the motion passed.

#### Resolution 13-03 – Temporary Property Tax Rule 626T & Temporary Property Tax Rule 302T.

Alan Dornfest, Property Tax Policy Bureau Chief, presented Resolution 13-03 – Temporary Property Tax Rule 626T & Temporary Property Tax Rule 302T, which is on personal property. Property Tax (PT) implemented HB315 signed by the Governor late last week, and this bill is retroactive.

Commissioner Katsilometes thanked Alan, Rick Anderson, George Brown, and Gary Houde for putting this rule on personal property together based on the new law and making it workable.

Commissioner Katsilometes moved that Resolution 13-03 – Temporary Property Tax Rule 626T & Temporary Property Tax Rule 302T be approved, and Commissioner Langhorst seconded. Commissioner Roberts asked for clarification on whether the rule gave guidance for entities to break out of the \$100,000 accessing the IRS rule. Alan responded that legal counsel advised the committee that the Rule not go into when restrictions should be drawn, due to the specific examples of when the IRS rule does not come into play. Commissioner Roberts noted that the taxpayers need to know about the application of this law because of the approaching May 1 deadline. There were no further comments or amendments. All voted in the affirmative, and the motion passed.

Administrative Policy No. 13-10 – Dress Code.

Roxanne Lopez, Human Resource Officer, presented Administrative Policy No. 13-10 – Dress Code to the Commission with a brief explanation of any revisions. This policy updates the existing policy and the significant change is the ability to have casual attire any day of the week. The dress code policy was already reviewed by the Executive Leadership Team and recommended to the Commission for adoption.

Commissioner Langhorst moved that the Administrative Policy No. 13-10 – Dress Code be approved, and Commissioner Katsilometes seconded. Commissioner Roberts noted that the commissioners always support that the employees have a professional appearance, but they also are aware many work long hours, so the commissioners will try this. There were no further comments or amendments. All voted in the affirmative, and the motion passed.

Commissioner Katsilometes recognized Lyn Darrington, from Gallatin Public Affairs, who was in attendance. Commissioner Langhorst noted working with Miss Darrington and other representatives of the tribes, so taxpayers and tax preparers have clear direction on how to deal with the resident issue. In light of the passage of House Concurrent Resolution 32, which declined to renew Idaho Income Tax Administrative Rule 033, subsections 03, 04, and 05 (IDAPA 35.01.01.033), the consensus is to follow the language of the Rule and instruct Audit and Collections to ignore this section.

Following discussion, the Commissioners made the following statement regarding HCR32:

*With the adoption of House Concurrent Resolution 32, the legislature has declined to renew Idaho Income Tax Administrative Rule 033, subsections 03, 04, and 05 (IDAPA 35.01.01.033). For guidance for the 2012 tax year, the Tax Commission will rely on the former rule. The Tax Commission will conduct negotiated rulemaking on Rule 033.*

Commissioner Langhorst moved that the Commission adopt this statement of direction and that it be memorialized in the minutes. Chairman Jackson seconded the motion. Chairman Jackson noted that the Governor has taken the Tribal Council very seriously and held the last Capitol for a Day with the Coeur d'Alene Tribe. The Chairman stated that the commissioners are working very hard to work with all the people involved, on this serious issue. All voted in favor and the motion passed.

Commissioner Roberts amended the order of the agenda to accommodate those in attendance. The Administrative Reports were delayed until after the Rules Committees give their reports.

### **Reports on Rules Committees.**

#### Income Tax, Administration & Enforcement, Kilowatt, Mine License Rules – Committee Chair, Cynthia Adrian.

Cynthia Adrian, Income Tax, Administration & Enforcement, Kilowatt, Mine License Rules Committee Chair, noted that the committee last met on April 3. A discussion draft of proposed temporary Rule 714 – Idaho Investment Tax Credit: Credit Earned on Property Used Both In and Outside Idaho in Taxable Years Beginning on or After January 1, 1995, was reviewed at the meeting. The issue is with 2012 HB 438 and makes a change to subsection 01 to clarify that a taxpayer is not required to prove that qualified investment property maintains an Idaho situs when claiming any portion of an unused credit in years after the close of the recapture period, so long as the qualified property for which the credit was granted otherwise remained a qualified investment in each of the taxable years during the recapture period.

Cynthia noted receiving a proposal from a member of the public to have rules not be retro-active and be perspective instead. Deputy Attorney General Phil Skinner said this policy decision needs to be taken up by the commissioners. Cynthia assured the member of the public that it will not fall through the cracks and will be on the agenda at the next Income Tax Rules Committee meeting on May 8.

Lyn Darrington commented on her appreciation of the Commission's efforts on resolving the tribal issue and especially the further assurance of being included in the development on it. Lyn added that she will get the word out to the tribes and added that the preparers will need guidance on how to do it. Discussion followed.

Chairman Jackson asked Cynthia if proposed temporary Rule 173 – Idaho Capital Gains Deduction—Pass Through Entities will be negotiated. Cynthia noted it was tabled and deferred for further research. The Chairman said it needed to come off the table to be redone properly, since there is a lot of interest on liquidation of partnership interest and if any capital gains. Michael Chakarun, Tax Policy Manager, agreed, so the committee will be getting back to Rule 173.

#### Motor and Special Fuels Tax Rules – Committee Chair, Don Williams.

Don Williams, the Motor and Special Fuels Tax Committee Chair, reported that there were two committee meetings, March 6 and April 2, since the last open meeting in March. Rule 105 – Licensed Gaseous Fuels Distributor Reports was discussed in the March 6 committee meeting and the first draft was discussed in the April 2 meeting. It is likely that this rule, which addresses a change to the statute in Idaho Code §63-2424 allowing the commission to sell gaseous fuel decals, along with manned and unmanned stations, will go through negotiated rulemaking.

The committee also discussed at the March 6 meeting the proposed Rule 110 – Calculation of Tax on Gaseous Fuels and proposed Rule 115 – When the Gasoline Tax Rate Increases, Use Conversion Factor to Adjust Annual Gaseous Fuels Permit Fees. Both rules were tabled until after the International Fuel Tax Agreement (IFTA) conversion ballot was submitted or IFTA ballot submission deadline passes, whichever comes first. Neither rule has a draft yet, but it is likely that Rule 110 will go through negotiated rulemaking.

The first draft for proposed Rule 270 – Refund Claims – Documentation was discussed at the March 6 meeting and the second draft was discussed at the April 2 meeting. This rule, along with the following proposed rules, were discussed at the April 2 meeting: Rule 290 – Records

Required for Intrastate Special Fuels Users Claiming Refunds for Nontaxable Special Fuels Used in Motor Vehicles; Rule 292 – Calculation of Refunds for Nontaxable Uses of Motor Fuels in Motor Vehicles; Rule 510 – application and Reporting of the Petroleum Transfer Fee. These rules will also likely go through negotiated rulemaking

Don responded to a question from Commissioner Katsilometes about the ballot submitted by IFTA. Don said he hoped to have the rule drafted before the next committee meeting.

Sales & Use Tax Administrative Rules – Committee Chair, McLean Russell.

Michael Chakarun, Tax Policy Manager, noted that McLean Russell, Sales & Use Tax Administrative Rules Committee Chair, was absent and reported that the last committee meeting was on March 20. The next committee meeting will be held on April 18.

Michael noted that the committee was waiting for the end of the legislative session to discuss Rule 027 – Computer Equipment, Software, & Data Services, due to pending legislation regarding cloud computing. The Notice of Intent was published in the January Bulletin, but the proposed rule will need to be changed to reflect any statutory changes.

Michael gave highlights on the status of the following sales and use tax proposed rules: the draft on Rule 037 – Aircraft and Flying Services has not been discussed yet; the second draft of Rule 100 – Prescriptions will be discussed after the Notice of Intent has been published; the second draft of Rule 144 – Records Required, Food Stamps, Electronic Benefits Transfers, and WIC Checks will be discussed in the April 18 meeting; the third draft of Rule 130 – Promoter Sponsored Events will also be discussed in the April 18 meeting.

Michael added that the committee discussed the Hotel & Motels Rule 010 – Definitions at the March 20 meeting, but there was no draft yet.

Property Tax Rules – Committee Chair, Alan Dornfest.

Alan Dornfest, Property Tax Rules Committee Chair, reported that there was a sub-committee meeting that afternoon on the procedure of appeals for operating property, which appeals Property Tax Rule 407.

Alan has been working with the Idaho Transportation Department and the counties regarding assessments on horse trailers being used as live-in trailers. The committee was working on the amount of space for horse trailers used as living quarters. Alan added that unfortunately, this could raise the registration fees and that tax being paid. The Department of Parks and Recreation will stand neutral on the fee determination.

There were no further questions.

**Administrative Reports.**

Revenue Operations, Doreen Warren.

Doreen Warren, Revenue Operations (RO) Division Administrator, reported that RO has received 514,000 of the 724,000 expected returns to be received and processed in the first six months,. Doreen noted that RO is expecting another 210,000 within the next couple of weeks and is prepared and ready for the next push of returns. Also, of the 550,000 expected refunds to pay this calendar year, RO has paid 322,000 so far.

Commissioner Katsilometes asked if the money borrowed from the Board of Examiners was transferred from the general fund to the refund fund. Doreen noted that some of it had, but RO does not expect the need for any more transfers.

Audit and Collections, Randy Tilley.

Randy Tilley, Audit and Collections Division Administrator, noted Audit and Collection (A/C) recoveries through March 31, 2013 were \$122,377,943. This was over \$16 million ahead of recoveries for this same time period last year.

Commissioner Langhorst told Randy that this was a good job and applause followed.

Management Services, Jim Sereduk.

Jim Sereduk, Purchasing Agent, reported, in Financial Officer Mark Popper's absence, that the Refund Fund fell below \$10 million on April 4 and a transfer of \$20 million from the general fund occurred. This will remain the same until the April 15 tax deadline

Jim noted receiving the official approval on the Tax Commission's administration of the Ketchum local option tax.

Commissioner Katsilometes asked if there was any more news about the sale of the building the Tax Commission occupies in Boise, Idaho. Jim said on April 16, the Board of Examiners will need to agree on the assignment from the old owners to the new owner. The building complex has three state agencies as tenants, the Department of Finance, Fish and Game, and the Idaho State Tax Commission. Jim also noted the possibility of having a new property management team handling the services in the building. Discussion followed.

Randy Tilley noted his appreciation for Mark Poppler and Jim Sereduk looking at expanding to allow the agency to expand and stay. Chuck Pond noted that American Resurgens Management (ARM) has been very good at following the agency's IRS procedures and security restrictions.

Property Tax, Steve Fiscus.

Steve Fiscus, Property Tax Division Administrator, noted that Property Tax (PT) conducted an interview in Coeur d' Alene for a consulting appraiser. A selection was made, although not an offer, since PT is still waiting on the fingerprint background checks. Steve noted it was a good experience working with the field office in Coeur d' Alene.

There were no more administrative reports.

**Other Business.**

There was no other business

**Public Comments.**

There were no more public comments.

There being no further business, the meeting adjourned.

Valerie Dilley  
Secretary

Ken A. Roberts  
Chair